



**U.S. Department of Justice**  
Civil Division, Appellate Staff  
950 Pennsylvania Ave. NW, Rm. 7325  
Washington, DC 20530

MS:NSC

Nicholas S. Crown  
nicholas.s.crown@usdoj.gov

Tel: (202) 616-5365

March 28, 2023

Mr. Mark Langer  
Clerk of the Court  
U.S. Court of Appeals for the  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue N.W.  
Washington, DC 20001

Re: *Center for Biological Diversity v. U.S. International Development Finance Corporation*, No. 22-5095 (D.C. Cir.), Oral argument held on March 16, 2023, before Judges Millett, Pillard, and Childs.

Dear Mr. Langer:

Appellants' Rule 28(j) letter references the public hearings provision of the statute governing the Overseas Private Investment Corporation. As discussed in our brief (at 6-7 & nn.1-3), Congress gave the U.S. International Development Finance Corporation (DFC) a different structure from either of its predecessors and imposed several specific transparency, accountability, and public-engagement requirements on the new Corporation. The provisions governing one of the earlier entities have no bearing on this case.

Appellants also cite a provision of the BUILD Act stating that "[t]he Council shall not be subject to the Federal Advisory Committee Act, (5 U.S.C. App.)." 22 U.S.C. § 9613(i)(4). Appellants did not address this provision in their district court or appellate briefs, and it is likewise inapposite. It refers not to the DFC's Board of Directors but to a "Development Advisory Council," which is a different body comprising different members. *Id.* § 9613(i)(1)-(3) (establishing a "Development Advisory Council ... to advise the Board" and "appointed by the Board").

Sincerely,

/s/ Nicholas S. Crown

Nicholas S. Crown

cc: Appellants (via CM/ECF)